

*REMARKS/ARGUMENTS*

In response to the Office Action mailed June 17, 2005, Applicants request continued examination. No claims are added or cancelled in this Amendment so that claims 29 and 31-69 remain pending.

In this Amendment minor errors in several claims are corrected. For example, a phrase formerly appearing in claim 59 that was intended to appear in claim 57 has been moved to claim 57. That change and other similar changes do not change the claims substantively.

The invention disclosed and claimed in the patent application has been previously described. Applicants rely upon the previous description and incorporate that description by reference. Nevertheless, particularly in view of similar amendments of all of the independent claims here, an important feature of the invention is again described. The invention relates to ensuring that persons viewing an audiovisual program, for which they may receive academic credit, are actually attentive to the audiovisual program. In order to confirm that attention, as each audiovisual program is presented, from time-to-time a viewing confirmation code is also presented to the viewer. The viewer then enters, through some entry means of the apparatus supplying the audiovisual program, an identical viewing confirmation code in order to confirm the viewing of the program. This response requires no thinking, no solution to a problem, no recall of facts, and no calculation. All that is required is entry of a viewing confirmation code identical to the code that is presented. When the viewer-entered viewing confirmation code is identical to the viewing confirmation code presented, then attention to the program can be confirmed. Entry of a different viewing confirmation code or failure to enter any viewing confirmation code is considered to indicate inattentiveness. Of course, an inadvertent error in entering a viewing confirmation code might be counted as inattention. In one aspect of the invention, an opportunity is presented to correct such an inadvertent error. In another aspect of the invention, if the entered confirmation code is not identical to the presented viewing confirmation code, but is in sufficient agreement with the presented confirmation code, then the viewer is considered attentive. See claims 68 and 69 providing for agreement within a range.

There is no requirement that each subsequently presented viewing confirmation code be identical to the previously presented viewing confirmation code and the amended claims

make this point clear. The presentation and response entry of viewing confirmation codes and the sequential presentation of varying confirmation codes are illustrated in Figures 6-11 and described from page 26, line 25 to page 29, line 22 of the patent application. This description supports any substantive amendments of the claims. As pointed out in the patent application, the entry of the viewing confirmation code by the viewer may be made through a keyboard, a mouse, or another input device. The invention also provides for detailed analysis of the code input by the viewer in determining the viewer's attentiveness. Considerations are given to the timing of the presentation of the viewing confirmation codes and the corresponding responses, any intervening delays, and like information.

All pending claims, erroneously stated at page 2 of the Office Action as claims 29-69, were nominally rejected as unpatentable over Lemelson et al. (U.S. Patent 5,832,788, hereinafter Lemelson), in view of Vogel (U.S. Patent 5,453,015). In fact, Vogel was employed as a secondary reference only with regard to certain claims as in the first Office Action. Further, with regard to at least two of the claims, the Examiner relied upon Official Notice to supplement one or both of Lemelson and Vogel. Applicants continue to traverse all of the rejections, particularly with respect to the claims now presented, and maintain the seasonable traversal with regard to the alleged "Official Notice".

Because of the generic way in which the claims were rejected, much of the following remarks is generic as to the claims now presented and that rejection.

Lemelson concerns an instructional system in which there is real-time interaction between a teacher or lecturer and students who are attending the lecture either at the lecture site or remotely. From time-to-time the teacher or one of his confederates, during the lecture, poses questions to the students through terminals employed by the students. The students then provide answers to the questions that are posed and the answers that are supplied are collected at a central station and are evaluated by the teacher or another person. The information derived from the answers supplied by the students is employed by the instructor, either directly or after statistical analysis, to alter the course of the lecture. The information derived from the answers supplied by the students is an indication of how well the students are comprehending the instructional material. The lecturer can thereby determine whether to increase or decrease the speed of the lecture or alter the way information is being presented in order to tailor the course, continuously, to the learning abilities and success of the students.

An essential feature of the Lemelson system is the presentation of substantive questions to the students and the analysis of substantive responses. See the Abstract and Summary sections of Lemelson. While all of the specification of Lemelson is important to understanding what is disclosed there, attention is also directed to the passages from column 2, line 47 through column 3, line 19. These passages demonstrate that the essence of the Lemelson system is the provision to the students of substantive questions and substantive responses. Lemelson even mentions the presentation of essay questions and responses. See column 5, lines 34-39. If, in response to a question, the student merely reproduces, in the response, the question, the response and the entire Lemelson system are useless. That response is not only the wrong answer, it is no answer.

In the invention, a viewer of an audiovisual program is, from time-to-time, requested to enter a presented viewing confirmation code and, to be correct, the viewing confirmation code entered must be identical to (or within a range of agreement with) the viewing confirmation code presented. In the previous examination, the Examiner has analogized the question and answer feature of Lemelson to the viewing confirmation feature of the claimed invention. However, there is no proper analogy. In Lemelson a substantive question is presented and a substantive answer is expected. Even if the answer to the question is selected from a group of proposed answers, i.e., a multiple-choice question, or if the answer is simply a "yes" or "no", the answer is clearly different from the question. If the presentation of the viewing confirmation code in the invention is considered to be a question, then the correct "answer" is the question, i.e., entry of an identical reproduction of the viewing confirmation code presented. Lemelson never discloses such an arrangement and cannot even suggest such an arrangement because it would be contrary to the intended and desired operation of the Lemelson system. If, in the Lemelson system, all of the answers received were identical to the questions, the lecturer in Lemelson could gather no information as to how well the material being presented was being comprehended and whether to make some adjustment in the presentation of that material. In other words, because Lemelson neither discloses nor suggests this important feature of the invention, made clear in the claims presented here, no part of the common rejection of the pending claims based upon Lemelson can properly be maintained, unless that feature is supplied by Vogel.

Vogel does not supply the feature of the invention disclosed and claimed that is missing from Lemelson. In fact, Vogel was not cited as potentially supplying that feature.

Instead, Vogel was cited as supplying various timing features that are part of some, but not all, of the claims formerly examined and now pending. Vogel describes a system including numerous terminals for selecting one of multiple alternative answers to questions by pressing an appropriate button. Vogel describes supplying these terminals to audience members of a quiz show. The audience members play the quiz game with a contestant and supply answers to questions by depressing one of the buttons corresponding to a particular response to a question. Because the answer to a question is ultimately disclosed in the quiz show, the time for making a selection by the audience member is limited to avoid cheating. Unlike Lemelson, in Vogel it is actually impossible to respond to a question with the same question because the input device in Vogel has no alphanumeric keys. Therefore, Vogel cannot even be analogized to the feature of the invention in which a viewing confirmation code presented to a viewer must be identically reproduced to confirm that the viewer is actually viewing the audiovisual program. Stated another way, no matter how one attempts to modify Lemelson with Vogel, at least one of the important features of the invention as defined by the claims now presented is missing. Therefore, *prima facie* obviousness cannot be demonstrated as to any pending claim based upon those two publications. Accordingly, the rejection cannot properly be maintained and all of claims 29 and 31-69 should now be allowed.

Applicants note that claims 33 and 37 were rejected not only over Lemelson in view of Vogel but also in view of Official Notice. The Official Notice taken is incorrect and expressly traversed. According to the Examiner, it is notoriously well known in the art to transmit information after an audiovisual program has ended, as in claim 33. This statement finds no support in the prior art cited in the Office Action and therefore is challenged. In fact, gathering the answers in the Lemelson system after the conclusion of the lecture is of no value whatsoever to the lecturer in adjusting the teaching method or speed to accommodate the learning speed of the students during the lecture. Vogel has no information to contribute with respect to this point the limitation of claim 33 or Official Notice. Should the Examiner intend to continue to reject claim 33, he must supply a prior art publication providing support for the part of claim 33 that is acknowledged to be missing from the publications relied upon in rejecting that claim.

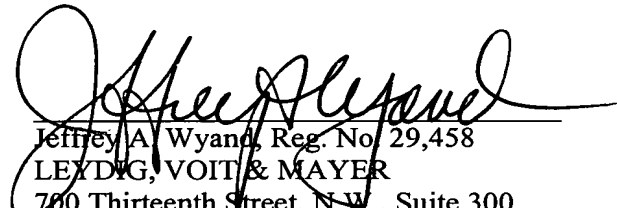
In commenting on the rejection of claim 53, which includes a limitation similar to claim 33, the Examiner did not rely on Official Notice. In fact, no comment pertinent to the limitation in claim 33 appears in the rejection of claim 53. The reliance on Figure 4 of

Lemelson is ambiguous and no part of Lemelson discloses the post-lecture transmission of answers to the lecturer's questions.

Claim 37 specifies that in the event of an interruption of transmission of the audiovisual program, an interruption code is transmitted to the principal supplying the audiovisual program. In the invention, it is important in reaching an accurate conclusion as to whether a viewer is paying attention not to consider a viewer inattentive when the viewer cannot receive the viewing confirmation code and, therefore, cannot respond to the presentation of that code. As acknowledged in the rejection, there is no similar need in Lemelson or Vogel and no suggestion there for the feature of claim 37. Official Notice simply is inadequate to supply this feature and the unsupported statement that the feature is known in the art is incorrect. Again, if the Examiner intends to maintain the rejection of claim 37 he must cite some teaching in the prior art properly combinable with whatever other publications may be applied to supply the limitation of claim 37. Otherwise, the rejection based upon Official Notice must be withdrawn.

For the reasons supplied here, the claims now presented clearly distinguish from the prior art and should be allowed. Prompt issuance of a Notice of Allowance is earnestly solicited.

Respectfully submitted,

  
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